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VIRTUTIS IMAGO: STUDIES ON THE CONCEPTUALISATION AND TRANSFORMATION OF AN ANCIENT IDEAL

Edited by

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THE UNSTAINED RULE OF THEODOSIUS II

A LATE ANTIQUE PANEGYRICAL TOPOS AND MORAL CONCERN

Peter VAN NUFFELEN

Panegyric had, among others, a moral aim, as stated by Pliny the Younger in his *Panegyricus Traiani*: "But I must bow to the decree of the senate which in the public interest has declared that under the form of a vote of thanks delivered by the voice of a consul, good rulers should recognise their own deeds, and bad ones what theirs should be"[1]. Thus, although tainted since Antiquity with a rather different reputation[2], panegyric does not simply flatter an emperor: it flatters him by showing how he realises a certain ideal of virtuousness. Another source of inspiration for Late Antique panegyric, Menander Rhetor (early fourth century?), put it this way: the orator should praise the emperor for "things universally acknowledged to be good"[3].

Typically, Menander's textbook advice makes things much simpler than they are. A panegyric cannot be read as a simple summing-up of the virtues current in Roman society at a given time. At least two factors cloud the relationship between virtue and text. Menander himself illustrates the first. An often recurring imperial quality indicates as much a sound use of rhetorical handbooks as the persistence of a certain ideal. By dubbing these qualities panegyrical *topoi*, we express the idea that the author attributed them to an emperor because the literary genre demanded so, not because the ruler really possessed them. In the second place, even virtues have to be interpreted. For example, things as divergent as executing the defeated enemy and the willingness to spare the enemy[4], could be adduced as testimonies of a good reign in a single panegyric. It is the context that turned acts into virtuous acts.

[1] Plin. *paneg.* 4,1 (tr. B. Radice). See also his *epist.* 3,18,2.
[2] E.g. Lact. *inst.* 1,15,13; Amm. 16,12,68; Hist. Aug. *Pesc.* 11,5; *Alex.* 35,1; Aug. *conf.* 6,6.
[3] Men. Rhet. II, *peri epid.* p. 368,7 (ed. D.A. Russell – N.G. Wilson).
[4] E.g. Paneg. 6(7),12,3; 14,4.

Two main interpretations of panegyrical *topoi* exist, each of them starting from one of the two factors singled out: either a literary analysis is preferred or the panegyric is read as propaganda. Both approaches focus on the tenuous relationship which panegyric entertains with reality: in the first the stress is on the literary character of a panegyrical speech, in the second it is perceived as ideology. In both cases, panegyric is a facade that serves to hide the real acts of the emperor, be it by literary dressing-up or by propagandistic deformation.

Although it is true that its relationship with reality is difficult to gauge, I will show how panegyric can be used to retrieve ideals of virtuousness that were current in Late Roman society. In accordance with Menander's advice, panegyrics were supposed to praise universally acknowledged virtues. Even when complying with the demands of literature and propaganda, the orator had to be understood by his public. So we can assume that the qualities he praised rang a bell in his audience. The more the panegyrist addressed moral concerns shared by his audience, the more his discourse would find an echo among them. Of course, we should not be so naive as to think that a panegyric simply expressed all moral concerns shared by his audience and to forget that it also drew on literary tools and paid allegiance to the imperial ideology. Nonetheless, panegyric offers us at least a glimpse of the moral discourse in which public concerns could be clothed[5]. To study panegyric from this perspective boils down to the question: What does it reveal about the order of the public moral discourse?

In this article, I will illustrate that this approach can be fruitful, by studying the public moral concern about the limitation of bloodshed in times of peace, culminating in the claim of an 'unstained rule'. Although essentially a transformation of the classical theme of *clementia* and *philanthropia*, it embraces a wider span of phenomena in Late Antiquity, something that can be taken to indicate a rise in the concern with bloodshed. I will show that it is not merely a literary *topos*, nor simply a part of the imperial ideology, but that it testifies to a widespread moral concern.

In the next pages I will work with the following assumptions, the necessity and soundness of which will become clear along the way.

[5] Cf. L. PERNOT (1993), 144, 152-153, 165, 259, 714-721, esp. 720: "Le discours épidictique a pour vocation principale de renforcer l'adhésion du public à des valeurs admises et reconnues".

1. Like our contemporary political discourse, the public moral discourse of Antiquity is seldom logically coherent. Although it draws upon moral concepts and theories, its consistency is guaranteed by the focus on a few general ideals. Having no fixed form, it is adapted to the specific occasion by *ad hoc* arguments. That is why I prefer the term 'moral concern': the discourse is centred on a shared problem or ideal, but it is not interested in a uniform theoretical foundation of these ideals. This can be seen in Late Antique panegyrics, which are no political or moral treatises, but offer occasional arguments related to a specific time, place, and person. As we will see, the ideal of an 'unstained rule' returns in many and sometimes contradictory variations. Panegyrics share the same general concern, but not necessarily the specific arguments. This implies that we must pay attention to the recurrence in different contexts of the panegyrical *topos*, and to the different topics to which it is applied.

2. If we assume that the concern with bloodshed is an element of the public moral discourse, we should expect to find traces of it in non-panegyrical sources. This check is necessary in order to prove that the *topos* is more than a literary tool.

3. I accept that the Late Antique corpus of panegyrical texts can be read as a unity, even if the speeches are addressed to such different individuals as the Ostrogothic king and the Byzantine emperor. As a consequence, I assume that the concern with bloodshed was general in the whole Mediterranean world during Late Antiquity (4^{th}-7^{th} centuries). This assumption can be criticised for eliminating possible local differences, but it seems to me that the sources are not available in sufficient number to reconstruct the multiple local discourses. And even if this appreciation of the evidence would prove wrong, one still has to start from the general picture.

The reconstruction of the discourse on the 'unstained rule' will be an act of balancing between mere rhetoric and a real moral concern. The selection of this specific *topos* will allow us to unravel the numerous strands that come together in this discourse. In this way, my article will illustrate the development of the ideals of virtue in Late Antiquity in general[6], and will show how such ideals influenced political decision making.

[6] For another example, see H. BELLEN (1997).

1. Socrates' praise of Theodosius II

I will start from the praise which the church historian Socrates (380/390-after 439) heaps on the emperor Theodosius II (408-450). The church historian records some instances of Theodosius' *philanthropia*, a typical imperial quality, in what is clearly marked as a panegyrical passage — the best proof of which is Socrates' claim that he will not flatter the emperor but tell the truth[7]. "When some of his most intimate friends once asked him, "Why do you never inflict capital punishment upon offenders?", he answered, "If only it were possible to restore to life those who have died". To another making a similar inquiry he replied, "It is neither a great nor a difficult thing for a mortal to be put to death, but nobody except God can resuscitate by repentance a person who has once died". So habitually indeed did he practise mercy, that whenever somebody committed a crime to be punished with death, and was sent away to be executed, he did never have to wait until he reached the gates of the city before being recalled by the emperor's humanity (*philanthropia*). Having once exhibited a show of hunting wild beasts in the amphitheatre at Constantinople, the people cried out to let one of the boldest *venatores* fight an enraged animal. But he said to them, "Don't you know that we are wont to view these spectacles with feelings of humanity?" By this expression he instructed the people to attend future shows in a more human (*philanthropos*) way"[8].

Theodosius' *philanthropia* expressed itself, according to Socrates, in the attempt to avoid human bloodshed, and this in two ways. On the one hand, he refused to execute people. The emperor did sentence men to death, but pardoned them almost immediately. Another church historian of the Theodosian Age, Sozomen (ca. 400-450), stated it in his address to the emperor, maybe under the influence of Socrates whom he had read, in this way: "Every age will boast of your rule as alone unstained (ἀναιμωτί) and pure from murder, beyond all governments that ever existed"[9].

On the other hand, Theodosius showed, at least on one occasion, restraint in the *venationes*. What does this imply? A first conclusion is easily drawn. Theodosius never convicted anyone *ad bestias*, a fact that is implied by the first part of the praise. But it is possible to be more

[7] Socr. *hist. eccl.* 7,22,1 (ed. G.C. Hansen, GCS N.F. 1). Cf. similar remarks by Plin. *paneg.* 72,5; Ennod. *opusc.* 1,78 (ed. C. Rohr); Men. Prot. *hist.* frg. 4,6 (ed. R. Blockley).
[8] Socr. *hist. eccl.* 7,22,9-12 (tr. C.D. Hartrauft).
[9] Soz. *hist. eccl.* Ded. 16 (ed. J. Bidez – G.C. Hansen, GCS N.F. 4; tr. A.C. Zenos).

precise. If the incident related by Socrates is representative of the general attitude of Theodosius (and undoubtedly this is how the church historian wanted to be understood), a Theodosian *venatio* was probably limited to an imitation of a hunt, staged in the arena. Combats in which men fought beasts, a normal feature of earlier Roman *venationes*, were excluded, because they were too bloody. Animal blood was shed, but not that of a human being.

According to Socrates, Theodosius abstained from two imperial institutions that unavoidably caused human bloodshed in times of peace: capital punishment and man-to-beast combats during *venationes*. Both claims are quite extraordinary, and the first is probably false. According to John Malalas, Theodosius had the *praefectus praetorio orientis* Rufinus (431/432) executed for fear of usurpation; however, the chronicler is probably confounding this Rufinus with the more famous eunuch, executed by Arcadius in 399[10]. In 441 the supposed lover of the empress Eudocia, Paulinus, was put to death on orders from Theodosius II[11]. Of course, one could argue that Socrates did not know of this event, as he wrote his Church History probably in about 439-440, but that would not really eliminate the suspicion raised. At any rate, the judgement of the contemporary historian Priscus is somewhat more cautious: "Although Theodosius readily gave forgiveness to all other misdemeanours, he was harsh and unappeasable not only towards those who attempted usurpation but also to those who were held worthy to be emperor and he moved by every means to eliminate them"[12].

An extraordinary quality of dubious reality highlights the presence of a panegyrical *topos*. A review of parallels for both claims made by Socrates will reveal that this *topos* reflects a public moral concern.

2. Capital punishment and the 'unstained rule'

First of all, a traditional division must be observed. The imperial actions praised by the panegyrists are to be divided into two categories, those the emperor does in times of war, and those he does in times of peace[13].

[10] Joh. Mal. *chron.* 14,18 (ed. J. Thurn, CSHB 35).
[11] Joh. Mal. *chron.* 14,8. The date is that defended by A. Cameron (1982), 266. The event is put in 443 by others scholars, e.g. K. Holum (1982), 193, n. 81.
[12] Prisc. *hist.* frg. 16 (ed. tr. R. Blockley).
[13] Men. Rhet. II, *peri epid.* p. 372,25-28.

A traditional Roman act of *philanthropia*, already given as an example by Menander Rhetor himself[14], was the sparing of a vanquished enemy. It stretched back to the Republican and Augustan age[15], recurred in Pliny's Panegyric on Trajan, and was very common in Late Antiquity[16]. A variation on the theme is the claim by the emperor Justin II that his predecessor Justinian I preferred, because of his *philanthropia* and not due to a lack of military resources, to pay the Huns yearly instalments instead of destroying them in a war[17].

Sometimes, the emperor was praised for having won a battle without having to fight, a victory without bloodshed. Julian praised for example Constantius II for his victory over Vetranion (350), whom he defeated by his eloquence and not by his weapons[18]. Christian panegyrists and historians also often applied the same *topos* to the emperor of their choice[19]. In an ecclesiastical context, an unstained victory could be won by an ascetic or a bishop[20], a case which provided an answer to the tricky question how the clergy could participate in war and violence. But although the avoidance of bloodshed in war was often praised, to kill in a war remained generally accepted, and certainly more than killing in time of peace. This is illustrated by Ennodius in his *Panegyricus Theoderici*, in which he criticised military exercises in time of peace during which recruits were killed[21].

Socrates' anecdote, however, does not pertain to war but to times of peace. Following once again our guide Menander, we know that a

[14] Men. Rhet. II, *peri epid.* p. 374,29-375,4. On the increasing importance of *philanthropia* in panegyric, see L. PERNOT (1993), 170.

[15] E.g. Cic. *off.* 1,35; Liv. 30,42,17; 37,45,8; Hor. *carm. saec.* 49-52; Verg. *Aen.* 6,853.

[16] Plin. *paneg.* 6,10; Paneg. 2(12),36,3; 2(12),45,4-6; 6(7),14,1-4; Tac. *ann.* 13,52,2; 14,23,1; Claud. *Get.* 91-93; *4 cons.* 114-121; Ennod. *opusc.* 1,19,49-50; Coripp. *Ioh.* 1,500-508; 8,575-583 (with the comments of M. LAUSBERG [1989]). See M. MAUSE (1994), 200-201.

[17] Men. Prot. *hist.* frg. 12,6, l. 34.

[18] Iulian. *orat.* 3,73b; Aur. Vict. *Caes.* 42,2. The *topos* reccurs in Iulian. *orat.* 1,49a; 3,99a; Paneg. 6(7),10; 10(2),7,5; P.Oxy. LXIII 4352 Fr. 5.II.30-31; Claud. *c. min.* 50 (57).

[19] Oros. *hist.* 7,35-37; Socr. *hist. eccl.* 7,42,3; Ennod. *opusc.* 3,64; Cassiod. *var.* 11,1,12; Coripp. *Iust.* 1,20-21; Georg. Pis. *Herakl.* 2,204-212. G. ZECCHINI (1984), 395, followed by M. CESA (1988), 157-158, claims that this motif, which often recurs in Christian literature, derives from Ambrose of Milan (cf. his *epist.* 15). The evidence adduced here shows that it is, in fact, an age-old *topos*.

[20] E.g. Rufin. *hist. eccl.* 11,32; Sulp. Sev. *Mart.* 4,7-9; Constantius vita, *Germ.* 18; Ps.-Sophr. *Vita Cyri et Johanni* PG 114,1248-1249.

[21] Ennod. *opusc.* 1,85.

panegyrist should address the virtue of justice, part of which is *philanthropia*[22]. Justice and *philanthropia* could be exercised and presented in different ways.

The simplest contrast was the one between good rulers, exercising justice, on the one hand, and tyrants, by nature indulging in massive bloodshed, on the other. The emperor Galerius as seen by Christians[23], the eunuch Rufinus (395) as represented by Claudian[24], Justinian I as depicted in the *Anecdota*[25], and the usurper Phocas (602-610) in the eyes of all[26], are just a few among many other examples[27]. A good rule, by contrast, announced itself by the abstinence of mass executions of those considered inimical to the new ruler[28]. Many good rulers were distinguished by similar feats of *philanthropia*. Antoninus Pius, for example, earned the epithet Pius for not executing those condemned to death by Hadrianus on his deathbed[29], or for not prosecuting those denounced to him early in his reign[30]. Another characteristic of good rulers was that conspirators often were simply pardoned[31]. An emotional variation on the theme is that good emperors, like Marcus Aurelius[32], or Nero and Domitian in their early days[33], could not stand the sight of bloodshed, whereas less appreciated figures, like Tiberius' son Drusus[34], or Caligula[35], were said to have loved it. According to Suetonius, Vespasianus cried when he felt obliged to execute a criminal[36].

[22] Men. Rhet. II, *peri epid.* p. 375,5-10.

[23] Lact. *mort. pers.* 21,6-11. Diocletian is also criticised by Lactantius for the bloodshed caused by his general policy (cf 7,12), but significantly, he wants to avoid bloodshed during the persecution of Christians; it is Galerius who is really responsible for the violence (11,8).

[24] Claud. *Ruf.* 1,234-240.

[25] Procop. *anecd.* 13,7.

[26] Georg. Pis. *Herakl.* 1,36; *Chronicon 1234*, 20 (A. PALMER [1993], 125); Anonymous 'hagiography' of Maurice p. 776,9-777,18 (ed. F. Nau PO 5).

[27] See also Paneg. 2(12),31,3; Aur. Vict. *Caes.* 17,7; Amm. 12,16,8; Claud. *Gild.* 167-181; Ennod. *opusc.* 1,12; Zosimus 5,45,4; Procop. *anecd.* 13,7. The *topos* is discussed by T. NISSEN (1940), 317-318.

[28] Ael. Arist. *orat.* 35,9. See e.g. Aur. Vict. *Caes.* 9,2 (Vespasianus).

[29] Aur. Vict. *Caes.* 14,14; Hist. Aug. *Hadr.* 25,8; *Pius* 2,4.

[30] Cass. Dio 70,2.

[31] Procop. *peri ktism.* 1,1,16 (Justinian I); Paul. Silent. *Descriptio* 35-39 (Justinian I) (ed. I. Bekker, CSHB 13); Evagr. Schol. *hist. eccl.* 6,2; 6,10 (Maurice) (ed. J. Bidez – L. Parmentier).

[32] Cass. Dio 72,29,3-4. Cf. also Hist. Aug. *Car.* 1,5.

[33] Suet. *Nero* 10,2; 12,1; *Dom.* 9,1: Domitian even considered forbidding the slaying of bullocks.

[34] Tac. *ann.* 1,76.

[35] Suet. *Cal.* 27,1.

[36] Suet. *Vesp.* 15,1.

If justice was the prerogative of good rulers, they could exercise it in many different ways. A claim which is often encountered in panegyrics is that the emperor or the imperial official punished criminals in a reasonable and just way. Claudian writes that Theodore (cos. 399) let reason judge the cases and not anger[37]. According to Corippus, Justin II spared all the innocent but none of the guilty[38]. *Severitas*, interpreted as the just punishment for a crime, was part of what the *inventores iuris antiqui* had decreed, writes Ammianus Marcellinus[39]. Still, his favourite emperor, Julian, threatened more than he effectively executed — *minabatur ferro potius quam utebatur*[40], and the historian criticised Valentinian I, whom he disliked, for never pardoning anybody[41]. According to the too well informed biographer of Aurelianus in the *Historia Augusta*, the sage Apollonius of Tyana counselled this emperor: *a cruore innocentium abstine*[42].

In the above-cited examples it is implied that capital punishment could be effected. Socrates, however, claims for Theodosius II that he completely abstained from capital executions. In this case, the exercise of *philanthropia* suspended the exercise of justice.

Although such a complete abstinence from executions in times of peace is already mentioned in one of the first Greek writings on kingship, Isocrates' *Nicocles*[43], it occurs rather rarely in the classical period[44]. The next example to my knowledge is found in Seneca's treatise *De clementia*, where the philosopher addresses Nero: "Your gift, Caesar, is a state untouched by blood, and your powerful boast that in the whole world you have shed not a drop of human blood is the more significant and wonderful because no one ever had the sword put in his hands at an earlier age"[45]. Such a *clementia* turns a man into a god[46]. "True happiness consists in giving safety to many in calling back to life

[37] Claud. *Theod.* 224-241.

[38] Coripp. *Iust.* 3,332 (*parcimus innocuis, sonti non parcimus ulli*). Cf. 2,234-236; 4,350-353.

[39] Amm. 22,10,1; 25,4,7; 27,9,5 (quotation); 31,14,2.

[40] Amm. 25,4,8. This is part of the virtue *lenitas*, 21,16,11; 25,4,9; 30,8,6.

[41] Amm. 30,8,3-6.

[42] Hist. Aug. *Aurelian.* 24,4. A similar idea can be found in e.g. Procop. *bella* 3,3,7.

[43] Isocr. *Nicocl.* 32.

[44] More common seems to be the attitude of, for example, the *Lettre of Aristeas* that insists on the fact that the king should not torture or execute his subjects unnecessarily or too easily (10,208 and 253).

[45] Sen. *clem.* 1,11,3 (tr. J.W. Basore).

[46] Sen. *clem.* 1,10,3; 1,19,8-9; 1,26,5. Similar thoughts are attributed to Marcus Aurelius by Hist. Aug. *Avid.* 11,6.

from the verge of death and in earning the civic crown by showing mercy"[47]. Soon afterwards, people knew better and Pseudo-Seneca, the author of the *Octavia*, plays with the contrast between a Nero who considers it an imperial quality to kill a large number of people and a Seneca who insists on the virtue of sparing lives, a virtue which will lead to the emperor's deification[48]. One should note that Seneca does not exclude *a priori* the execution of criminals as something bad. Sometimes punishment must be exacted. The philosopher is rather concerned with the possible cruel consequences of an unrestrained rule of passions like anger. By arguing that *clementia* should be shown in the exercise of justice, he wants to control the passions the ruler is subject to[49].

Suetonius writes that Titus never executed anybody after he had become *pontifex maximus*[50]. Although H. Martinet is probably right in commenting that "all diese Zeugnisse sich nicht beziehen auf Hinrichtung nach ordentlichen Gerichtsurteilen"[51], it was interpreted otherwise in Late Antiquity: according to Ausonius and Orosius, Titus' rule was unstained[52].

We have to wait for more than half a century to find another example[53]. The historian Herodian claims for Marcus Aurelius[54] and Severus Alexander that their reigns were unstained[55]. Curiously enough, the *Historia Augusta*, which draws on Herodian, does not follow its source in this appreciation. The author of the life of Marcus Aurelius states, although he considers this emperor a *bonus princeps*: "It was customary with Antoninus to punish all crimes with lighter penalties than were usually inflicted by the laws; although at times, toward those who were clearly guilty of serious crimes he remained implacable"[56]. In the case of Severus Alexander, the author even refutes explicitly Herodian's

[47] Sen. *clem.* 1,26,5.

[48] Ps.-Sen. *Octavia* 472-532; cf. 442-443.

[49] Cf. Sen. *clem.* 2,3,1-2; 2,4,4; 2,7,3; *dial.* 3,1,1; 3,6,4; 3,15; 4,5,3-5; 5,19. See T. ADAM (1970) 31-39; W.V. HARRIS (2001) 241-242 and 248-254.

[50] Suet. *Tit.* 9,1. See also Cass. Dio 66,19,1; Eutr. 7,21,2.

[51] H. MARTINET (1981), 99.

[52] Auson. *Caesares* 87; Oros. *hist.* 7,9,13; cf. Drac. *satisf.* 183.

[53] It is said of Trajan that during his reign only one senator was convicted, without the emperor having knowledge of it (Eutr. 8,4). Other general references to the idea of an 'unstained rule' could possibly be read in Sen. *dial.* 1,2,10; Dio Chrys., *orat.* 2,77; 4,44. See also Dio Chrys. *orat.* 31,25, where to remit punishments is cited as an example of *philanthropia*.

[54] Herod. 2,8,8; 2,14,1.

[55] Herod. 6,1,7; 6,9,8.

[56] Hist. Aug. *Aur.* 24 (tr. D. Magie).

claim: "Some writers have maintained in their books that Alexander's reign was without bloodshed. This, however, is not the case, for he was given the name of Severus by his soldiers because of his strictness, and his punishments were in some cases much too harsh"[57].

In Late Antiquity, the idea of an 'unstained rule' seems to have played a more prominent role. We have already seen that some Late Antique authors had a better thought of Titus' accomplishments, and that others tried to diminish the qualities of Marcus Aurelius and Severus Alexander. A relatively large number of the emperors of the Later Roman Empire were praised for this virtue and, moreover, the ideal now stretched out to both imperial and clerical officials.

To forgive easily and to abstain from capital executions was to be a major characteristic of an emperor, wrote Augustine[58], and many emperors followed this advice — at least if we may believe their panegyrists. We have already noticed Socrates and Sozomenus' claim in relation to Theodosius II[59]. Zeno the Isaurian (474-491) condemned some conspirators to the whip and sent them into exile, because he wanted "to abstain from execution and murder", according to the historian Malchus[60]. The poet Dracontius tried to obtain pardon from the Vandal king Gonthamond (484-496) by painting a vivid *tableau* of divine and royal mercy, and by suggesting that anybody who asked for mercy should be pardoned. Bloodshed had to be limited to battle: but even then, all the captives are spared[61]. Anastasius (491-518) was praised for his general clemency by Procopius of Gaza[62] and by Evagrius Scholasticus, who singles out that the emperor wanted to avoid human bloodshed[63]. The 12th-century Byzantine author Constantinus Manasses even states without a hint of doubt that Anastasius rules his empire in a bloodless way (ἀναιμωτὶ χειρίζεται τοὺς οἴακας τοῦ κράτους)[64]. According to

[57] Hist. Aug. *Alex.* 25,1-2 (tr. D. Magie). See also 21,1: *condemnationes perraras esse iussit, at quae factae fuerant non indulsit*; 52,2: ἀναίματον *imperium eius, cum fuerit durus et tetricus, idcirco vocatum est quod senatorem nullum occiderit, ut Herodianus scriptor refert in libris temporum suorum.*

[58] Aug. *civ.* 5,24; *epist.* 133. See also Ven. Fort. *carm.* 6,1, l. 90-99.

[59] For other possible references, see John Chrysostom on Constantine (*hom. de stat.* 21 PG 49,215), Ambrose on Valentinian II and Gratian (*obit. Valent.* 79), Procopius on Amalasountha, queen of the Goths (*bella* 5,2,4).

[60] Malch. *hist.* frg. 15 (ed. R. Blockley). Cf. frg. 16,2.

[61] Drac. *satisf.* 121-123; 149-174; 257; 287-316; and esp. 131: *nemo cadet sub iure tuo sub morte cruenta* (but this statement can also be taken to refer only to the sparing of war captives).

[62] Procop. Gaz. *paneg.* 10 (ed. A. Chauvot).

[63] Evagr. Schol. *hist. eccl.* 3,34.

[64] Const. Man. *brev.* l. 3100-3102 (ed. O. Lampsidis, CSHB 36).

George of Pisidia, the emperor Heraclius did not spill any blood in times of peace (his wars against Persia were, of course, another matter)[65]. He does not specify whether it was an occasional measure or a policy. Claudian addressed Stilicho, who was assimilated to an emperor by both his power and his panegyrist: "Taught by Clementia, thou accountest it cruel and barbarous to batten on suffering and human slaughter. The sword that dips blood in war thou wearest unstained in peace"[66].

Not only emperors or their pairs, but also lower imperial officials, such as Paulinus of Nola and Rutilius Namatianus, took pride in having kept their "sword and axe" free from blood[67]. Bishops such as Gregory of Nazianze praised officials for their unstained rule[68].

It is not by accident that the clergy laid stress on this quality. In Christian panegyric, this extreme kind of clemency is often related to clerical inspiration. The clergy, in particular the bishops, were supposed neither to kill anybody, nor to take part in executions[69]. Part of their task was even to save people from executions[70]. John Chrysostom boasted that he and he alone saved Saturninus and Aurelian from the Gothic commander Gaïnas[71]. Pseudo-Martyrius, the author of an *epitaphios* on John Chrysostom, tells how the bishop intervened personally to save the person who assaulted him from execution[72]. This was, of course, an ideal, and many examples of deviant behaviour can be found[73].

[65] Georg. Pisid. *persik. polem.* 1,90; *Herakl.* 1,41. Cf. M. Whitby (2002), 163, who seems to treat clemency in times of peace and war as of the same kind.

[66] Claud. *Stil.* 2,14: *haec [Clementia] docet ut proenis hominum vel sanguine pasci turpe ferumque putes; ut ferrum, Marte cruentum, siccum pace feras* (tr. M. Platnauer).

[67] Paul. Nol. *carm.* 21,376; 21,396; Rut. Nam. 1,159-160. Ambr. *epist.* 25 refers to the claim of an 'unstained axe' by pagan officials and exhorts Christians to do the same. See also Liban. *orat.* 22,13. It has been noted before that, in Late Antiquity, officials were very frequently praised for their justice. See e.g. Prisc. *Anast.* 29-30 (ed. A. Chauvot); L. Robert (1948), 18, 108 for the epigraphic evidence.

[68] Greg. Naz. *epist.* 224,3. See also Isid. Pel. *epist.* 1,35; 5,268 with T. Halton (1995).

[69] Paneg. 2(12),29,1-4; Greg. Tur. *Franc.* 4,42; *Vita Hil. Arel.* 21.

[70] E.g. Greg. Naz. *orat.* 43,57; Ambr. *off.* 2,21; Aug. *epist.* 153; *c. Cresc.* 3,50 (with A. Houlou [1974], 22-23); Cod. Theod. 9,40,24 (24,9,419); Socr. *hist. eccl.* 1,13,10; Constantius, *vita Germ.* 36; Ennod. *carm.* 3,25; Greg. Tur. *Franc.* 5,18; 6,8; 6,10; 6,36. In this context the debate between Theodoric, claiming that it is his duty to execute enemies, and Epiphanius who tries to prevent him from doing so, gains additional interest (Ennod. *carm.* 3,130-141). It reads like a reenactment of the debate between Nero and Seneca in the *Octavia*.

[71] Joh. Chrys. *cum Sat.* PG 52,425.

[72] Ps.-Mart. *vita Joh. Chrys.* BHG 871,515b.

[73] A very salient example can be found in ACO 2,1,1 actio VI p. 140,25-26 (ed. E. Schwartz), where the bishops gathered in Chalcedon (451) cry out that Eusebius of Dorylaeum should be burnt alive and cut into pieces.

We have seen that the quality of *philanthropia* in justice can take many forms. A tyrant is supposed to indulge in massive bloodshed, whereas a good and just ruler does not. But the latter's *philanthropia* is not of a single kind. It could be a reasonable application of punishment or a strong tendency towards forgiveness, but its most extreme manifestation was the complete abstinence from executions. In Late Antiquity, this *topos* seems to have gained wider popularity and is not exclusively reserved to the emperor. It extends to his officials, some of whom even claim that they actually lived up to that ideal. Although not a strictly Christian virtue, it was particularly appreciated by the clergy who were supposed to live up to the ideal themselves.

3. Venationes *and the 'unstained rule'*

Another indication of the fact that Late Antiquity witnessed a rise in the concern with human bloodshed, is that other phenomena which previously were not considered in this context, came also to be seen in the light of the 'unstained rule'. The Church historian Socrates has already given us a very salient example of this: the restrictions placed on *venationes*.

Venationes entered relatively late into the orbit of the argument about *philanthropia* and the abstinence of bloodshed. The panegyric in honour of Constantine, written in 313, openly applauded the mass executions of captives who were thrown *ad bestias*[74]. Ambrose of Milan praised Valentinian II (375-392) for ordering the immediate slaughter of all the animals put to show in a *venatio*, not because the spectacle was inhuman, but rather because it detracted his mind from state business[75]. The Christian poet Prudentius even promoted the *venationes* as an alternative to the disgusting gladiatorial shows (403)[76].

Concern about the frightful fate of those condemned *ad bestias* had been expressed earlier by both pagans[77] and Christians[78], but it was only in the middle of the fifth century that the *venationes* as such came under

[74] Paneg. 12(9),23,3. Cf. Paneg. 6(7),12,3; Symm. *rel.* 47,1.

[75] Ambr. *obit. Valent.* 15. For a similar claim concerning Julian, see Liban. *orat.* 18,170.

[76] Prud. *c. Symm.* 2,1091-1130.

[77] E.g. Hist. Aug. *Car.* 1,6.

[78] Arnob. *nat.* 2,41; Prud. *ham.* 370-374.

fire[79]. One of the earliest criticisms seems to come from Quodvultdeus, bishop of Carthago in 437-439, who protested against their bloody character because usually just a few hunters had to face too many beasts[80]. The anecdote told by Socrates about Theodosius II is probably the first instance where the argument of bloodshed against *venationes* is used in a panegyrical context.

In later panegyrics the argument returns. Both Procopius of Gaza and Priscianus praise the emperor Anastasius (491-518) for an accomplishment similar to the one attributed to Theodosius II. Procopius, writing shortly after 501, states: "Lately the cities organised some inhuman spectacles. Unfortunate men were in public given over to the beasts, having as spectators those who are by nature their brothers. And men took pleasure, I do not know how, in seeing a man lacerated and his body not buried in the earth, and instead of a grave, occupying the entrails of the beasts"[81]. In the words of his fellow-panegyrist Priscianus, writing circa 503: "You have put an end to these abominable games where the souls were damned, and you forbade that pleasures should be found in blood and that one should loose his life when trying to nourish his body, by preventing that a human body would be devoured by fangs, fangs by which the malicious ferocity of the beasts is armed"[82]. According to Procopius and Priscianus, Anastasius abolished games in which men were devoured by animals.

The exact measure taken by Anastasius remains unclear. The early sixth-century Church historian John Diacrinomenus stated that he "ended the *venationes*", and the contemporary chronicler Pseudo-Joshua the Stylite dates a general edict in this sense to August 499[83]. The exis-

[79] See W. Weismann (1972) 79-80 on the relative lack of criticism on *venationes*. He only discusses the Latin sources. There are two laws in the *Codex Theodosianus* regulating the supply of animals for the *venationes* (15,11,1-2 [414, 417]).

[80] Quodv. *symb.* 1,2,25-26 (ed. R. Braun, CCSL 60).

[81] Procop. Gaz. *paneg.* 15: Πρότερον γὰρ θέας τινὰς ἦγον ἀπανθρώπους αἱ πόλεις· ἄνδρες γὰρ δυστυχεῖς ἐν μέσῳ δήμῳ παρεδίδοντο τοῖς θηρίοις, θεατὰς ἔχοντες τοὺς τὸ συγγενὲς τῆς φύσεως κεκτημένους, καὶ ἥδετό τις οὐκ οἶδ'ὅπως ἀνὴρ ἄνδρα διασπώμενον θεωρῶν καὶ μηδὲ γῇ τὸ σῶμα κρυπτόμενον, ἀλλ'ὥσπερ ἀντὶ τάφου τὰς τῶν θηρίων πληροῦντα γαστέρας. For the theme of animal's entrails as a sepulchre, see Ignat. *ad Rom.* 4,2; Apul. *met.* 4,13.

[82] Prisc. *Anast.* 223-227: *ipse vetas ludos, animarum damna, nefandos / atque voluptates prohibes a sanguine sumi / corporis et causa pascendi perdere vitam / humanos arcens lacerari dentibus artus / dentibus, armatur rabies quibus atra ferarum.*

[83] Johannes Diacrinomenus, p. 156, l. 15-16 (ed. G.C. Hansen, GCS N.F. 3) = Theoph. *chronic.* a. 493 (ed. I. Classen, CSHB); Pseudo-Joshua Stylites 34 (ed. W. Wright).

tence of two consular diptychs of 506 (for Areobindus) and 517 (for Anastasius) that depict men fighting animals causes uncertainty about the correctness of their statement[84]. But one can always attribute these depictions to standardised artistic imagery. Furthermore, both panegyrists do not have to mean more than that the *venationes* in which men fought animals were stopped, whereas spectacles in which animals fought animals continued[85]. If they are right, the historians John and Joshua may have seen too much in the measure.

Another point of uncertainty is whether capital executions were included in Anastasius' measure. Priscianus writes that those who died in the arena chose this profession in order to "nourish their bodies"; this suggests that he alludes to professional *venatores*. Some elements seem to indicate that Procopius wanted his audience to believe of Anastasius what Socrates claimed for Theodosius II. It is important to note in this respect that the vocabulary of Procopius (θέας τινὰς ἀπανθρώπους) mirrors that of Socrates, who wrote that Theodosius II taught his subjects to θεᾶσθαι φιλανθρώπως. Moreover, as already noticed, Anastasius was praised for his general clemency by Procopius[86]. Thus, it seems fairly reasonable to conclude that Procopius at least wanted his audience to believe that Anastasius abolished the condemnation *ad bestias*[87]. Whether the emperor really took such a measure, is far less certain.

Can these claims concerning restrictions on *venationes* be fitted into a general evolution of this form of entertainment or do they only illustrate the panegyrical demand of *auxesis*? It is clear that condemnations *ad bestias* were not abolished forever (if they were abolished at all), as they are recorded after Theodosius II and after Anastasius[88]. Even if Theodosius or Anastasius may have stopped them for a while, the measure did not last very long[89]. So it is not unlikely that this aspect of the praise for Theodosius II and Anastasius represents a case of panegyrical exaggeration.

[84] R. DELBRÜCK (1929), pl. 9-12, p. 107-115 and pl. 20-21 p. 127-133.
[85] Cf. A. CHASTAGNOL (1966), 62.
[86] Procop. Gaz. *paneg.* 10.
[87] See C. ROUECHÉ (1993), 78.
[88] E.g. Soz. *hist. eccl.* 7,25,11-12; Novell. Iust. 105,2; Joh. Ephes. *hist. eccl.* 3,33; 3,35 (ed. E.W. Brooks CSCO 106); Greg. M. *dial.* 3,11,1-3 (under the reign of Totila [541-552]); Ioh. Bicl. *chron.* a. 568; Pseudo-Sebeos, *Armenian History* 20 p. 92-93 tr. p. 39-40 (ed. G.V. Abgaryan, tr. R.W. Thomson) (A.D. 589). In light of this evidence, it seems not correct to state that the *ad bestias* penalty probably disappeared in the 4th century (so J. HARRIES [1999], 139).
[89] Cf. A. CAMERON (1973), 191. R. LIM (1997), 163, n. 13 seems to claim that the ban was longstanding.

It is certain, however, that the *venationes* gradually disappeared in Late Antiquity. As argued by Alan Cameron[90], the decline of beast hunts had already set in in the early fifth century. Although traditional man-to-beast fights continued to be staged[91], the spectacles seem to have become more gentle and restricted to beast-to-beast fights[92] and the parading of animals[93]. In 537 Justinian I limited the number of *venationes*, in a law that distinguishes between imitation of hunts and man-to-beast fights[94]. Later the council *In Trullo* (691-692) forbade them altogether[95]. From the 8th century onwards, no hunts seem to have taken place anymore[96].

The standard explanation for this decline is the lack of resources and the fear for public disturbances[97]. Without disputing its veracity, I think it is important not to forget the discourse in which these measures were clothed. One can occasionally find somebody like Procopius blaming Justinian I in his *Anecdota* for abolishing all the hunts and other spectacles for reasons of economy[98] — but parsimony is a *topos* of the invective. More often, however, arguments against the *venationes* draw upon the rhetoric of clemency and the avoidance of human bloodshed. *Venationes* are included in a law of the emperors Leo and Anthemius (469) prohibiting spectacles on Sundays, and dubbed *ferarum lacrimosa spectacula*[99]. Theodoric the Great, by the feather of Cassiodorus, argues in 522 that these are spectacles *quae refugere deberet humanitas*[100]. So even if the real reasons may have been political and economical, the

[90] A. CAMERON (1973), 228-230. Cf. A. CHASTAGNOL (1966), 60; B. WARD-PERKINS (1984), 111-112; F. KAYSER (2000), 471-472.
[91] Zach. Schol. *Vita Sev.* p. 51,15 (ed. M.-A. Kugener PO 2.1): before 488, but the text could also concern condemnations *ad bestias*; Anthol. Palat. 9,533; 9,581; Cod. Iust. 1,4,34 (534 A.D.).
[92] This seems to be the case in Aug. *c. acad.* 1,2; *civ.* 3,14. About such a fight, see Sen. *dial.* 5,43,2.
[93] Cf. Cassiod. *chron.* a. 519; Marcell. *chron.* a. 521.
[94] Novell. Iust. 105,1.
[95] Canon 51: Mansi 11 p. 968.
[96] R. GUILLAND (1966), 289-292.
[97] A. CAMERON (1973), 230-239; A. CHAUVOT (1986), 164-168; B. WARD-PERKINS (1984), 115; R. LIM (1997), 165. Similar explanations have been advanced for gladiatorial games: G. VILLE (1960), 332-333.
[98] Procop. *anecd.* 26,8-9.
[99] Cod. Iust. 3,12,11. See also Joh. Mal. *chron.* 14,39. The historian Priscus (mid 5th century) laments the money spent on θέας ἀτόπους. These could include *venationes*. Note that from January 15, 365 on, it was forbidden to condemn Christians *ad bestias* (Cod. Theod. 9,40,8).
[100] Cassiod. *var.* 5,42,6 (ed. A.J. Fridh, CCSL 96 p. 218,37).

abolishment of the *venationes* was presented as a moral measure. This suggests that moral considerations did play a role.

Thus, at least from the mid-fifth century onwards, the idea of an unstained rule included the *venationes*. This may have happened even earlier. Already some passages from Claudian could possibly be taken to suggest that no human blood was shed during *venationes*[101]. Even if this were the case, it remains significant that the poet did not insist on this fact, as later panegyrists such as Socrates, Procopius, and Priscianus did.

The informed reader will have noticed that the discourse on *venationes* used arguments which were very similar to those brought against gladiatorial games[102]. The main difference is to be found in the fact that the Christians started to fulminate against gladiators much earlier and that, in comparison to those, *venationes* continued to be regarded as the lesser evil[103]. By the time the discourse on bloodshed discovered the *venationes*, gladiatorial games had already disappeared (early fifth century)[104].

4. *Sources of the discourse on the 'unstained rule'*

It is clear by now that we are confronted with a Late Antique discourse that betrays an important concern with human bloodshed in times of peace. I have offered only a limited reconstruction by focusing on two elements: the *a priori* refusal to execute anybody and the limitations set on *venationes*. It would be interesting to broaden the perspective and, for example, to approach the question from the point of view of *crudelitas*[105], or anger[106], or the concept of *clementia* itself[107], but that would lead us too far. Notwithstanding these limitations, some

[101] Claud. *Theod.* 291-310; *6 cons.* 618-620; *Stil.* 3,367-369.

[102] Contrary to the discourse on *venationes*, the one against gladiators has often been studied. See G. VILLE (1960); W. WEISMANN (1972); T. WIEDEMANN (1992), 146-154; P. VEYNE (1999).

[103] An example of this can be found in Joh. Mal. *chron.* 12,54: the good emperor Nerva abolished gladiatorial games and installed the *venationes* instead.

[104] Different accounts can be found in D.R. FRENCH (1986), 63-70; C. ROUECHÉ (1993), 76-79; P. VEYNE (1999), 911-913; J.H.W.G. LIEBESCHUETZ (2001), 203-220.

[105] Cf. R. SEAGER (1986), 26, 45; S. DIEFFENBACH (2000), 103-112; D. BARAZ (2003), 46.

[106] W.V. HARRIS (2001), 258-263 has some brief remarks on the fourth century.

[107] A heightened concern with *clementia* in the fourth century was suggested by R. SEAGER (1984), 163, on the basis of the *Panegyrici Latini*.

general conclusions can be drawn. In the first place, the concern seems to have become more important from the fourth century onwards than it was before, as the ideal of an 'unstained rule' was claimed for relatively more emperors and also for both imperial and clerical officials. In the second place, the discourse now included phenomena that were previously not considered from this point of view, like gladiatorial games[108] and *venationes*. This shows that the moral discourse on the 'unstained rule' functioned as a lens through which social phenomena were viewed and judged.

This double shift, a relative increase and extension of the concern, begs for an explanation. In my opinion, the shift is not to be explained in terms of a reaction to a supposed increase of violence and cruelty in punishment in Late Roman society. Not only is this a very contentious issue[109]; we have also seen that the discourse on the 'unstained rule' is not reacting to all forms of cruelty, but is only concerned with age-old institutions, such as capital punishment and *venationes*. This shows that it is rooted in a changed appreciation of bloodshed and not in a possible rise in cruelty[110]. It is difficult to say how this change came about and which elements triggered it. Rather than attempting a hazardous causal explanation, I will briefly discuss four different sources which supplied arguments against bloodshed to the discourse that I have been studying. By identifying these sources, we will be able to see both the continuity with earlier periods and the innovation of Late Antiquity.

First of all, we have seen that the concern with bloodshed in times of peace often resulted in the suspension (real or imagined by the panegyrists) of capital punishment. In the case of Theodosius II, the culprit was convicted but his punishment remitted. This must be linked with the concept of justice current in Late Antiquity. The goal of the laws was not mere punishment, but reform. As the scope of the laws was to favour a change in the attitude of the subjects, they had to be applied with care for the individual[111]. An illustration of this idea can be found in the numerous contemporary claims that the imperial anti-heretic legislation

[108] On the earlier Roman 'insensibility' towards gladiatorial games, see P. VEYNE (1999), 887-893.

[109] D. LIEBS (1985); J. MATTHEWS (1987); R. MACMULLEN (1990b); D. GRODZYNSKI (1984), 376-379, who ascertain an increasing severity in punishments; J. HARRIES (1999), 124 and 135 doubts that punishments became harsher.

[110] Compare J. HARRIES (1999), 119.

[111] J. HARRIES (1999), 119, 136 and 144; D.J. O'MEARA (2003), 98-100 and 114-115. An eloquent illustration of this can be found in Basil. Caes. *epist.* 112.

which threatened the non-orthodox with gruesome punishments, was intended to scare the heretics so that they might convert[112]. Seen from this perspective, the restraint in punishment by not applying the full force of the law was in a certain sense inherent to the conception of law in this period. It was more or less expected that the coercive measures of the law would not always be fully applied and that the judge or ruler would show clemency.

This argument drawn from juridical theory does not suffice, as it only provides a parallel for the way in which the concern with bloodshed expressed itself, namely the suspension of punishment. But the discourse on the 'unstained rule' was a moral discourse, and in that sense it was occupied with the person who ordered the punishment. In Late Antique political philosophy, officials, including the emperor, were supposed to model their behaviour on God. This is our second source: the imitation of God was a moral and spiritual ideal for Christians and pagans alike. It is unnecessary to argue here at length that it was a basic principle of political theory, which went back to Hellenistic and Roman philosophy[113]. That qualities like justice and clemency were ascribed to the divine and supposed to be imitated on earth is aptly illustrated by this passage of a probably fifth-century pseudo-Chrysostomic sermon on Luke 17,3: "Emperors, guard in justice the empire given to you from heaven! [...] Make this empire given to you on earth an imitation (μίμημα) of the empire in heaven!"[114] This idea is inevitably encountered in almost any discussion of imperial power in Late Antiquity. Moreover, it came to be stressed that, as a divine quality, clemency was not only to be practised by the ruler: all those who wielded power, such as bishops and governors, were supposed to imitate God[115]. As the following examples suggest, it seems that in Late Antique political theory, the imitation of the divine was mainly understood in terms of justly exercising the power associated with an imperial office (be it as emperor or in a lower function), and less as a full spiritual or moral identification with the divine.

[112] E.g. Greg. Naz. *carm.* 2,1,11, l. 1287-1294 and l. 1304; Soz. *hist. eccl.* 2,5,2; 2,32,5; 7,12,11-12. Compare Claud. *Stil.* 2,24-29; Coripp. *Iust.* 4,350-365; Const. Sirmond. 8 (386); 12 (408); Novell. *Theod.* 3,8 (438); 8,1 (439); 11 (439); Novell. *Valent.* 7,3 (447); Novell. Iust. 111 (541).

[113] C. Spicq (1958); F. Dvornik (1966); T. Adam (1970); H. Crouzel (1978).

[114] *Hom. in Luc. 17,3*, l. 90-98 (ed. K.-H. Uthemann). See also, e.g., Euseb. Caes. *Laus Const.* 2,5; Joh. Chrys. *hom. de stat.* 3 PG 49,48; Prisc. *Anast.* 198; Agapet. *cap.* 40 PG 78,1176; 64 PG 78,1184.

[115] Greg. Naz. *epist.* 140; Soz. *hist. eccl.* 1,17,4.

Not only justice but also clemency was a divine quality. When it came to arguing for the remittal of capital punishment, rhetoricians would constantly draw on this argument. For example, when Libanius pleaded the case of Antioch, whose population had rioted and demolished the statues of Theodosius I (389), he asked the emperor to remit the punishment with the argument that "anyone who wants to be like the gods should have more joy in remitting punishment than in inflicting it"[116]. On a different occasion but for the same emperor, Themistius used the same line of argument: only the sparing of lives would make man similar to God[117]. This idea of a kind of deification by showing clemency recurs often in panegyric. In several of his poems, Claudian insists on the divine character of clemency; it is even the preferred way of self-deification: "Mercy alone makes us equal to the gods"[118].

A very salient example of how this pagan imagery of deification could conflict with Christian opinions can be found at the end of the second book of Corippus' panegyric on Justin. As the climax of the whole book, he described how Justin II pardoned offenders. In response to petitioners, who asked that their crimes might be erased, the emperor "nodded assent to their grief-stricken prayers, and like a god ordered that they should all be released from their charges — for he is a god who with one word seeks to make the evil just and to rescue them from the midst of death". Sensing that his audience could be offended by attributing divinity to the emperor, Corippus explained: "Believe this sincerely: I did not say this hastily. Whoever does this is a god. God is in the heart of our rulers: whatever orders God gives, these are the ruling principle for our rulers. Christ gave earthly lords power over all: He is omnipotent, and the earthly king is the image of the omnipotent". *Ille est omnipotens, hic omnipotentis imago*[119].

For Christians, Easter was the day by excellence to remit punishments. On the day on which Christ had risen after having died for our sins, human rulers should also remit the sins of their subjects. When arguing why Theodosius I should not punish the rioting population of

[116] Liban. *orat.* 19,12 (tr. A.F. Norman). Cf. Liban. *orat.* 1,239; 19,21; 20,15; 23,13.

[117] Themistius, *orat.* 19,229a; 230d-231c. Note that the sentence "[Theodosius I] ἐγείρει ἐκ θανάτου" could allude to the New Testament (e.g. Matth 27,63; Luc 7,22; Ioh 5,21; Rom 8,11; I Cor 15,16; II Cor 1,9; Hebr 11,19).

[118] Claud. *4 cons.* 277. See also Claud. *Theod.* 227-228; *Stil.* 2,24-29.

[119] Coripp. *Iust.* 2,420-427 (tr. A. Cameron). One could wonder in this context if Ambrosius, when praising Gratian and Valentinian II for being *super agnos clementiores*, intends to compare these rulers to Christ (*obit. Valent.* 79).

Antioch, John Chrysostom had recourse to this argument[120]. Imperial laws would indeed decree general amnesty on Easter — although the *raison d'état* restricted it to those convicted of a *levius crimen*[121].

Clementia and *philanthropia* were, of course, no Late Antique inventions. *Clementia* had played a key role in Roman imperial ideology ever since Caesar's successful use of it as a propaganda weapon[122]; *philanthropia* was a Greek term closely related to traditional imperial virtues such as *clementia* and *humanitas*[123]. This points to a third source for the discourse on bloodshed and the remittal of capital punishment: the imperial *clementia*. Like in earlier periods of Roman imperial history, to exercise *clementia* was supposed to be part of the emperor's normal behaviour in Late Antiquity[124].

The Late Antique discourse on the 'unstained rule' had another element in common with the earlier view on *clementia*. Violence and cruelty were seen as an expression of the character of the doer, and not as the exponent of social constraints. By the same token, its opposite, *clementia*, was deemed a personal ideal, to be realised by personal action[125]. A policy of addressing the social and political roots of cruelty and crime by appropriate measures did not enter the mind of the people at the time. The abolishment of the *venationes* and the gladiatorial games, which could be interpreted as measures on the social level, were, as we have noticed, exclusively justified by moral arguments. Moreover, Seneca opposed *clementia* to *crudelitas*, which was understood as unrestrained cruelty during punishment[126]. We have seen that the 'unstained rule' also focused on some institutional forms of bloodshed.

Even if the continuity between early and late imperial *clementia* is a fact, we should be aware that the *clementia* related to the Late Antique discourse on human bloodshed was of a more radical kind. Seneca, the most important theorist of imperial *clementia*, accepted that, depending on the circumstances, executions could be part of it[127]. Although no Late Roman emperor abolished capital punishment, the recurring praise for an 'unstained rule'

[120] John. Chrysos. *hom. de stat.* 3 PG 49,48; 6 PG 49,84; 21 PG 49,217.

[121] Cod. Theod. 9,35,4 (380); 9,38,3 (367); 6 (381); 7 (384); 8 (185); cf. B. RASPELS (1991), 295, n. 38. Compare Const. Sirmond. 8 (386). Similar things could happen on Sundays, see e.g. Ambr. *obit. Valent.* 18; Cod. Theod. 9,3,7 (409).

[122] L. WICKERT (1954), 2234-2248; K. WINKLER (1957), 213-214; A. WALLACE-HADRILL (1981).

[123] E.g. S. TROMP DE RUITER (1931), 302-303.

[124] E.g. Symm. *rel.* 49; Cod. Theod. 9,38,10 (405).

[125] P. GARNSEY (1968), 156; A. LINTOTT (1992); T. VILJAMAA (1992), 54.

[126] Sen. *clem.* 2,4. Cf. S. DIEFFENBACH (2000), 103.

[127] See *supra* note 49.

seems to hint to the fact that in Late Antiquity *clementia* had become identified with the sparing of lives and that the imitation of God by *philanthropia* was understood as the remittal of capital punishment, which was not the case before[128]. In this context, it should be remarked that in Late Antiquity the concept of *clementia* was enriched with *misericordia*[129], which Seneca considered a deviated version of *clementia*[130].

Very important for this extension was, of course, Christianity — our fourth source. Christian ethics was more radical than its pagan counterpart as far as killing was concerned. Summarising the Christian tradition about killing up until his own time, Lactantius stated in absolute terms that to kill a man was always abominable (*occidere hominem sit semper nefas*)[131]. This was both justified as a divine commandment[132] and as an imitation of God[133].

Conscious of the radical character of this command, Christians like for example Gregory of Nazianze, liked to oppose the law of the state, "causing bloodshed", and their own, which was mild and "refrained from anger"[134]. Christian officials should *idealiter* not participate in executions, exhorts Ambrosius. Who did, was to be excluded from the communion[135]. The radical aspect of Christian ethics was also recognised by their pagan adversaries and exploited to oust the Christians from public functions. If they did not want to use their disciplinary power and execute criminals, Christians should not become governors, argued Libanius[136]. The church historian Rufinus even attributes a law in this sense to the emperor Julian, although it is certainly spurious[137].

[128] Cf. A. LINTOTT (1968), 50: "The Romans, therefore, laid little weight on the infliction of death or suffering as such, and this was by the same token callous, but removed from sadism. Reasons could be found to justify what we would consider extremes of cruelty: the absence of good reason, on the other hand, could render a less shocking act cruel". See also P. VEYNE (1999), 893-895.

[129] See H. PETRÉ (1934), 380; G. DOWNEY (1955); P. HENRY (1967), 302; J. DE ROMILLY (1974), 314-321.

[130] Sen. *clem.* 2,4,4.

[131] Lact. *inst.* 6,6,19. For discussion and additional sources, see L.J. SWIFT (1979); K. WINKLER (1957), 218-222.

[132] Tert. *adv. Iud.* 3,10: *nova lex clementiam designabat.*

[133] Aristid. *apol.* 14,3. For later examples, see Joh. Chrys. *in Eutrop.* PG 52,396; Ps.-Joh. Chrys. *c. theatra* PG 56,548; Aug. *civ.* 1,34; *epist.* 120,19 (PL 38,461). See K. WINKLER (1957), 221-224 and 228.

[134] Greg. Naz. *epist.* 78,6. See also Lact. *inst.* 5,8,6-9; Greg. Naz. *orat.* 4,120; 5,35-37; Rufin. *hist. eccl.* 11,22. Augustine's attitude is similar, see A. HOULOU (1974).

[135] Ambr. *epist.* 25; cf. *obit. Theod.* 34. Compare Aug. *epist.* 134, with A. HOULOU (1974), 18-20.

[136] Liban. *orat.* 45,27.

[137] Rufin. *hist. eccl.* 10,33; Socr. *hist. eccl.* 3,13,3.

This evidence makes clear that Christian ethics must enter this study as one of the sources for the discourse on the 'unstained rule'. I do not want to claim that Christianity made 'the' difference; as we have seen, the idea of an 'unstained rule' is no Late Antique or Christian innovation. It made a difference, in the sense that it offered an additional source of moral concern with cruelty and bloodshed, and that it attracted attention to activities that were previously considered harmless[138]. It seems quite obvious that the heightened concern with bloodshed in Late Antiquity and the progressive extension of the moral discourse I have reconstructed, is partly due to the new religion that started to dominate public discourse. However, it would be a serious mistake to claim that Christianity was the only source for this discourse, or, for that matter, no source at all[139].

The four sources we have identified allow us to suggest an explanation of the rise of the 'unstained rule'. We have seen that this ideal was rooted in the traditional Roman virtue of *clementia*. But the *clementia* of Late Antiquity was much broader and more radical than the Early Roman one. An important factor for this extension was Christianity, with its ideal of abstinence from bloodshed, which started to influence the public discourse from the fourth century onwards. In addition, Late Antique juridical theory stressed the idea of reform, and not that of punishment, as the goal of law, whereas in political theory, the just exercise of any public office implied the imitation of divine justice and mercy. Although these last two elements did not enter the scene in Late Antiquity, they seem to have occupied a more prominent position in Late Antique thought than before and may have influenced the shape of the discourse on the 'unstained rule'.

5. *Conclusion*

I have offered an, admittedly rudimentary, reconstruction of the Late Antique discourse on the 'unstained rule'. It addressed three phenomena: capital punishment, *venationes*, which I have treated extensively, and gladiatorial games, which I have briefly touched upon. The discourse is characterised by a moral concern with bloodshed in times of peace. Pardoning criminals or abolishing bloody institutions like gladiatorial or man-to-beast combats resulted in moral praise; the ideal was that of an 'unstained rule', during which the state functioned without causing the death of any of its subjects. I have identified four sources on which the discourse drew for its arguments against capital punishments and bloody games: the idea of reform instead of punishment as goal of the law; the imitation of the divine as the fundamental principle of the exercise of power; traditional Roman imperial concern with *clementia*; and, finally, Christian ethics. Even though it had a classical ascendancy, it is only in Late Antiquity that the idea of an 'unstained rule' became widely current, and was associated with the general exercise of power by both emperors and lower officials.

It would be a mistake to assume that the ideal of the 'unstained rule' was a full-fledged moral theory about social and juridical reform, or even only about punishment. Its coherence was not logical but guaranteed by the fact that it focused on a limited range of phenomena (executions and spectacles that caused the death of the participants), in which the concern expressed itself most clearly.

As we have seen, in panegyrics, but also in many other writings of Late Antiquity, the acts of emperors, officials and clergy were measured by the ideal of the 'unstained rule'. This allows us to answer the initial question about the relationship between panegyrical *topoi* and the 'universally acknowledged good'. Because the 'unstained rule' functioned as a moral standard to judge actions, it was not entirely an ideological construct or a mere literary device. Although its formulation in the different panegyrics certainly owed a lot to literary *auxesis* — we have for example seen that it is very doubtful that Theodosius II's reign was entirely unstained as Socrates claims —, the *topos* was rooted in a widespread concern with bloodshed. It would not have had the success it had in Late Antiquity and would not have surfaced in other writings apart from panegyrics, if it had not been based on an existing moral discourse. This does not mean that every individual shared this ideal; examples of deviant opinions can be found. In Procopius' account, Petrus Patricius opposed the king and the Neoplatonic philosopher, who was not allowed to execute anybody. The king did not seem to be subject to that rule[140].

[138] See for example Constantine's law that Christians should be sent to the mines instead of serving as gladiators, which criticises *cruenta spectacula* and considers it better that these criminals are punished without having to shed their blood (Cod. Theod. 15,12,1 [325]). This measure is overinterpreted by Eusebius (*Vita Const.* 4,25,1, followed by Soz. *hist. eccl.* 1,1,5-6), who claims that the gladiatorial games were abolished. See J. MATTHEWS (2000), 291, n. 32; Y. RIVIÈRE (2002), 354-358.

[139] The idea that Christianity was a mere epiphenomenon and exercised no original influence is defended by Y. THÉBERT (1988), 318-320. R. MACMULLEN (1990a) is more cautious.

[140] Cf. Procop. *bella* 5,6,10.

Notwithstanding these alternative discourses, the 'unstained rule' occupied a very important place in Late Antiquity.

A final remark on the role of such a moral discourse. Can we assume that the ideal of an 'unstained rule' directed all the actions of the Late Antique imperial officials and that there was a decrease in capital punishments? This would, of course, be naive: a discourse is not identical to acts. However, it would be equally wrong to discount a moral discourse as a mere facade without actual influence on the events. We have seen, for example, that the demise of gladiatorial games and *venationes* is now generally attributed to economic considerations and not to moral arguments[141]. Without wanting to replace this argumentation by a moral one, it seems unjustified to eliminate the moral discourse as a factor in explaining the change in Late Antique spectacles. It was this discourse that drew attention to them and that shaped the arguments advanced against them. Even if they certainly co-operated with other factors, the moral concerns of an age should not be eliminated as a factor. When estimating their influence on society, two pitfalls should be avoided: a moral discourse is not simply an expression of behaviour, but nor is it unrelated to it. Rather, it shapes the way people think about phenomena and how they judge actions. In this way, the ideal of the 'unstained rule' was a normative moral discourse: it provided a yardstick to judge previous actions and it offered guidelines for later acts[142].

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[141] But see P. VEYNE (1999), 903, who insists on the Christian "morale de l'intériorité", which led the Christians to condemn shows and spectacles. On p. 916, he suggests that Christian ethics remained blind to capital punishment. I have shown in this paper that this must be qualified.

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